HIGH COURT OF UTTARANCHAL, AT NAINITAL.

Criminal Misc. Application No. 1117 of 2001
(Old No. 2896 of 1985)

M/s Laxmi Oil Industries
Bareilly through its proprietor
Sri Jagdish Prasad
S/o late Sri Raghunath
R/o 57 Kali Wari, Bareilly ……Applicant.

Vs.

1. State of Uttaranchal
2. Food Inspector, Pithoragarh …..Respondents

Hon'ble J. C. S. Rawat, J.

Heard Sri Dharmendra Barthwal i/b for Sri Alok Singh learned senior counsel for the applicant and Sri G. S. Sandhu learned A.G.A.

2. The petition has been filed under section 482 of the Code of Criminal Procedure (for short 'Code') to quash the proceedings in Criminal Case No.277/1983 State Vs. Prem Singh under section 7/16 Prevention of Food Adulteration Act pending in the court of Chief Judicial Magistrate, Pithoragarh.

3. Brief allegations in the complaint lodged before the Magistrate concerned was that on 31.8.1982 at about 2:30PM the sample of mustard oil was alleged to have been taken by the food inspector from the shop of Prem Singh. The sample was sent to the Public Analyst, Lucknow, U.P., who reported it to be adulteration. On the said complaint, the learned Magistrate passed the impugned order.

4. The learned counsel for the petitioner contended that the applicant has not issued any warranty and he

could not be summoned under section 20(A) of the Prevention of Food Adulteration Act 1954.

5. The learned counsel in support of his arguments has referred the decision in **M/s Chet Ram Parumal Oil Mill Vs. State of U.P. and another 1999(38) ACC p/938,** in which it has been held:-

> "5. *I have heard Mr. B.D. Mandhyan learned counsel for the applicant and learned A.G.A. Inspite of notices being served to the opposite party, no counter affidavit has been filed. The revision is pending since 7.12.1984 and about 14-1/2 years have elapsed. Learned counsel for the applicant contended that the name of the applicant was not disclosed by the vendor as required by section 14 of the Act. No copy of the notice was sent by the Food Inspector in accordance with the provisions of Section 13(2) of the Act. The learned counsel for the applicant also referred to Section 14 of the Act, which requires the manufacturer not to sell any article of food to any vendor unless he also gives a warranty in writing in the prescribed form about the nature and quality of such article to the vendor. Section 14 of the Act, further provides that the bill, cash memorandum or invoice given by the manufacturer shall be deemed to be a warranty given by such manufacturer. Learned counsel for the applicant contended that the applicant contended that the applicant had neither given any warranty nor any bill, cash memorandum or invoice to the vendor nor the Vendor had purchased the oil-tins from it, therefore, the applicant could not be tried. It was next contended that by the learned counsel that in the absence of any evidence*

available on the record or collected by the Food Inspector, the applicant could not be summoned. The learned counsel also referred to Section 20-A of the Act which empowers the Magistrate to summon the manufacturer at any stage of the trial if any evidence is adduced before him that the manufacturer is also concerned with the offence."

6. The learned counsel in support of his arguments has also referred the decision in **Om Prakash Shivprakash Vs. K.I. Kuriakose SCC 1999 (8) p/633** in which it has been that the court has the power to implead the manufacturer, distributor or dealer under section 20-A of the Prevention of Food Adulteration Act and this power cannot be invoked before the stage of adducing the evidence in the trial. The Hon'ble Supreme Court has further clarified that the trial for the offences under the Act begins when the Magistrate asks the accused whether he pleads guilty or not as envisaged in section 251 of the Code. The evidence can be adduced only after recording the plea of the accused. Thus, the position is clear that power under section 20-A cannot be invoked before the stage of adducing evidence in the trial, nor can it be invoked after the conclusion of the trial.

7. The learned AGA conceded the position of facts and law as has been laid down under section 14 and 21 (A) of the Act.

8. In the instant case, the applicant had neither given any warranty nor any bill, cash memo or invoice to the vendor nor the Vendor had purchased the oil from the

applicant. In view of the above position of law and facts, the applicant is not liable to be tried at this stage.

9. In view of the foregoing discussion, I find that the Magistrate concerned has committed an error in summoning the applicant. Therefore, the proceedings in Criminal Case No.277/1983 State Vs. Prem Singh under section 7/16 Prevention of Food Adulteration Act pending in the court of Chief Judicial Magistrate, Pithoragarh are quashed only against the applicant. So far as the proceedings against the other accused is concerned, the court below shall proceed against the other accused, if any. However, it is made clear that at any stage of the trial if any evidence is brought on record indicating that the applicant is concerned with the crime it shall be open to the court concerned to summon the applicant and proceed against him.

10. The petition is disposed of accordingly.

(J. C. S. Rawat, J.)

Dated 11.8.2005

LSR